

1 KEHOE & ASSOCIATES  
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E-Filed 3-1-12

7 **UNITED STATES BANKRUPTCY COURT**  
8 **DISTRICT OF NEVADA**

9 In re:  
10 JOHN E. HARNEY, IV. and AIMEE M.  
11 HARNEY,  
12   
13 Debtors.

Case No. BK-S-11-10391-BAM  
Chapter 11

Date: April 3, 2012 (OST Requested)  
Time: 9:00 a.m.  
Estimated Time: 5 minutes

14 **MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

15 Martin Keough (“Keough”), by and through his attorney, Ty E. Kehoe, Esq. hereby  
16 moves this Honorable Court for an order granting relief from the automatic stay of 11 U.S.C. §  
17 362 to permit Keough to exercise his remedies pursuant to applicable law, relating to real  
18 property commonly known as 4842 Camino Hermoso, North Las Vegas, NV 89031, Clark  
19 County Nevada Assessor Number 124-33-415-033 (“Real Property”), including foreclosing  
20 upon the Real Property or obtaining a deed in lieu of foreclosure related to the real property, and  
21 obtaining possession of the Real Property.

22 This motion is made pursuant to 11 U.S.C. § 362 and is based upon the § 362  
23 Information Sheet filed herein, a copy of which is attached as **Exhibit A** hereto, the pleadings,

24  
25     ///  
26     ///  
27     ///  
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1 papers and records on file in this action, and any evidence and oral argument to be presented at  
 2 the time of the hearing of the motion.

3 DATED this 1<sup>st</sup> day of March, 2012.

KEHOE & ASSOCIATES



5 Ty E. Kehoe, Esq.

6 **FACTS AND LEGAL MEMORANDUM**

7 Pursuant to Local Rules of Bankruptcy Practice 4001(a)(4), the § 362 Information Sheet  
 8 filed herewith is incorporated as the statement of facts and legal memorandum, and is  
 9 supplemented below.

10 Based upon the Debtor's own filings herein, Debtor has no equity in the Real Property.  
 11 The Real Property is worth approximately \$86,000, and \$250,000 is owed to Keough (who  
 12 holds the first and only lien against the Real Property). 11 U.S.C. 362(d)(2)(A).

13 Debtor does not occupy the Real Property, but instead rents it out as an investment.  
 14 Although Debtor initially intended to try to keep the Real Property through the Chapter 11,  
 15 Keough objected to the Original Proposed Plan, including based upon the fact that the Debtor  
 16 does not benefit at all from renting the Real Property. Debtor has filed an Amended Proposed  
 17 Plan indicating an intent to surrender the Real Property to Keough, via deed in lieu of  
 18 foreclosure or foreclosure (at Keough's option). 11 U.S.C. 362(d)(2)(B).

19 Debtor has been in Bankruptcy for over one year, during which time Debtor has not paid  
 20 Keough anything, has not paid the real property taxes, and upon information and belief has let  
 21 insurance lapse. 11 U.S.C. 362(d)(1). Debtor's Original Proposed Plan has been pending since  
 22 June 2011, for a variety of reasons including tax issues. Debtor has now filed an Amended  
 23 Proposed Plan. Although the Amended Proposed Plan treats Keough better than the Original  
 24 Proposed Plan, Keough still objects to the same. Thus, Keough is not convinced that the  
 25

1 Amended Proposed Plan will be confirmed, or at least continued beyond the current hearing  
2 date of March 20<sup>th</sup>; therefore, Keough is requesting immediate relief from the automatic stay so  
3 that he can commence recovering his Real Property.

4 DATED this 1<sup>st</sup> day of March, 2012.  
5

6 KEHOE & ASSOCIATES  
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8 Ty E. Kehoe, Esq.  
9 871 Coronado Center Drive, Suite 200  
Henderson, Nevada 89052

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\* \* § 362 INFORMATION SHEET \* \*

John and Aimee Harney

BK\_11-10391-BAM

DEBTOR  
Martin Keough

BANKRUPTCY #

MOTION #

CHAPTER: 11

MOVANT by and through Ty E. Kehoe, Esq., #6011 702-837-1908

Certification of Attempt to Resolve the Matter Without Court Action:*Moving counsel hereby certifies that pursuant to the requirements of LR 4001(a)(5), an attempt has been made to resolve the matter without court action, but movant has been unable to do so.*

Date: \_\_\_\_\_

Signature: EXEMPTED - Surrender indicated in proposed plan

Attorney for Movant

PROPERTY INVOLVED IN THIS MOTION: 4842 Camino Hermoso, North Las Vegas, NV 89031

NOTICE SERVED ON: Debtor(s)  ; Debtor's counsel  ; Trustee  ;

DATE OF SERVICE: March 1, 2012

MOVING PARTY'S CONTENTIONS:

The EXTENT and PRIORITY of LIENS:

1st Approx \$250,000

2nd \_\_\_\_\_

3rd \_\_\_\_\_

4th \_\_\_\_\_

Other: \_\_\_\_\_

Total Encumbrances: Approx \$250,000

## APPRAISAL of OPINION as to VALUE:

Approx \$86,000 per court order

entered herein on June 22, 2011

DEBTOR'S CONTENTIONS:

The EXTENT and PRIORITY of LIENS:

1st \_\_\_\_\_

2nd \_\_\_\_\_

3rd \_\_\_\_\_

4th \_\_\_\_\_

Other: \_\_\_\_\_

Total Encumbrances: \_\_\_\_\_

## APPRAISAL of OPINION as to VALUE:

TERMS of MOVANT'S CONTRACT  
with the DEBTOR(S):Amount of Note: \$230,000Interest Rate: 5.5%Duration: 7 yearsPayment per Month: \$1,054.00Date of Default: March 2009Amount in Arrears: \$38,998Date of Notice of Default: Client demand approx April 09

## SPECIAL CIRCUMSTANCES:

Amended Plan indicates intent to surrender

Debtor does not occupy the Property, but rents it

SUBMITTED BY: Ty E. Kehoe, Esq. 837-1908SIGNATURE: Ty E. KehoeDEBTOR'S OFFER of "ADEQUATE  
PROTECTION" for MOVANT:

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## SPECIAL CIRCUMSTANCES:

SUBMITTED BY: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_